

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 975 of 1992****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)**Versus****YAGULKISHOR JANKILAL,SA-VALIYAPROVISION STORE - Opponent(s)**

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Appearance :

MR HL JANI APP for Appellant(s) : 1,

None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 25/10/2007****ORAL JUDGMENT**

1.0 This appeal is directed against the judgment and order dated 30.05.1992 passed by the learned Judicial Magistrate, First Class, Ahmedabad [Rural], Mirzapur in Criminal Case No. 28 of 1989 whereby, the respondent – accused was acquitted of the

charges levelled against him.

2.0 The brief facts of the prosecution case are as under;

2.1 On 24.12.1986 an inspection was carried out at the shop of the respondent – accused by the Officers of the Food & Civil Supplies Department of the appellant – State. A sample of Ground-nut Oil was purchased from the respondent, after completing necessary formalities, in the presence of '*panchas*' and after making necessary payment towards the same. One part of the said sample was sent to the Central Food Laboratory, Rajkot for examination and the other sample was sent to the Local Health Authority on the same day.

2.2 On examination, the said sample of Ground-nut Oil was found to be adulterated. Therefore, after following the necessary formalities, a complaint was filed against the respondent before the Court of learned J.M.F.C., Ahmedabad [Rural] and, ultimately, trial was initiated against the respondent. The prosecution has examined two witnesses namely, PW – 1 Manilal Hargovindas Patel at Exhibit – 18 and PW – 2 Parmanandbhai Asumal at Exhibit – 66 and has also relied upon documentary evidence, more particularly, the Report of the Public Analyst. At the end of trial, the learned Magistrate acquitted the respondent of the charges levelled against him.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which

would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

“16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision

on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with”.

[Emphasis supplied]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 Having gone through the entire evidence available on record, it appears that the sample so collected from the shop of the respondent – accused was adulterated and, therefore, I find that the conclusion arrived at by the Court below is perverse and that it has committed a manifest error of law and has ignored the material evidence on record. In my opinion, the reasonings adopted by the trial Court while acquitting the respondent – accused from the charges levelled against him are not proper and justifiable. Therefore, the trial Court has committed an error in acquitting the respondent – accused from the charges levelled against him.

7.0 Ordinarily, when the Court comes to the conclusion that the Court below was not justified in passing the impugned order, then the said order is required to be set aside. However, having

regard to the fact that a period of more than 21 years have elapsed after the alleged offence in question was committed, I do not find it feasible to interfere with the said order passed by the Court below.

8.0 Considering the facts of the case, it would be relevant to refer to a decision of the Apex Court in the case of ***State of Maharashtra & anr. v. M/s. Gopalprasad Govindprasad Agarwal & ors.*** reported in ***A.I.R. 1999 S.C. 1507*** wherein the Apex Court has held that since the offence in question was committed almost 20 years ago, the Court should be refrained from setting aside the order of acquittal based on the ground of improper sanction. Similar observations have been made by this Court in a decision in the case of ***Ramesh Ganpatrao Bendbar v. Jivanlal Mangaldas Shah*** reported in ***2005 (2) G.L.H. 89***.

9.0 In view of the principle laid down by the Apex Court in the case of *State of Maharashtra v. M/s. Gopalprasad Govindprasad Agarwal* (supra), I am not interfering in this appeal though I am not in agreement with the findings recorded and the conclusion arrived at by the Court below.

10.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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